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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th June, 2024

No.13/2/126-HII(2)-2024/9066.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **39/2017** dated **19.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JASBIR SINGH S/O SH. NIRMAL SINGH, C/O SHRI R.K. GAUTAM, REPRESENTATIVE,
CHAMBER NO.441, LAWYER'S CHAMBER COMPLEX, DISTRICT COURTS, SECTOR 43,
DISTRICT COURTS, SECTOR 43, CHANDIGARH (Workman)

AND

1. THE CHIEF ENGINEER (H.Q.) P.W.D. (B&R), PUNJAB, THE MALL ROAD, PATIALA (PUNJAB).
2. THE EXECUTIVE ENGINEER, P.W.D. (B&R.) PUNJAB, ROOM NO.315-16, 4TH FLOOR, 17 BAYS BUILDING, SECTOR 17, CHANDIGARH.
3. GOLDEN EAGLE SECURITY SERVICES, S.C.O. NO.2475-76 (FIRST FLOOR), SECTOR 22-C, CHANDIGARH THROUGH ITS PARTNER - MAJOR S.S. BEDI (RETD.). (Management)

AWARD

1. Jasbir Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).
2. Briefly stated the averments of claim statement are that the workman was appointed as *Beldar* by the Executive Engineer, PWD (B&R), Punjab, Chandigarh on daily wage basis after following the regular process of selection, without any written appointment letter. The workman joined his duty in the

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department on 01.03.2004. The attendance of the workman was used to be recorded on the attendance register by Shri Hemant Sharma - Junior Engineer of concerned Sub-Division No.3 prior to the period of 24.01.2015, where the workman was working under his supervision & control. The workman has been working continuously without any break in his service w.e.f. 01.03.2004 in the department to handle the maintenance work as assigned to him from time to time by the S.D.O. and J.E. concerned of the department. It is the practice in the department, to issue a complaint slip by the Supervisor / Motor-Mate to the skilled / semi-skilled / un-skilled daily wage workers to attend the complaint of the residents of the Government houses. The duty of the workman was always assigned by the officials of the department, to help the Mason / Carpenter, while handling the maintenance work at the site. The workman has made detailed representation dated 31.03.2014 to respondents No.1 & 2 (*here-in-after managements No.1 & 2*) through registered post. The workman had requested in his aforesaid representation that his case be considered for regularisation of his services on the post of *Beldar* and to grant him salary in the regular pay scale on the basis of instructions issued by the Punjab Government from time to time. Feeling no action by the department on his representation, the workman had filed a Civil Writ Petition (C.W.P.) No.14790 of 2014 titled as Jarnail Singh & Others Versus State of Punjab & Others before the Hon'ble High Court, Chandigarh in which the workman was arrayed as petitioner No.3. The said Writ Petition was disposed off on 30.07.2014 with the directions to the Chief Engineer (HQ), P.W.D. (B&R), Punjab to decide the representation made by the petitioners by passing an appropriate order thereon in accordance with law. The Chief Engineer (HQ), P.W.D. (B&R) Punjab has rejected the representations of the petitioners of the aforesaid Writ Petition on the ground that petitioners have failed to establish on the record, the employer-employee relationship with the department with any cogent evidence on record vide order dated 16.12.2014. The workman along with other workmen challenged the impugned order dated 16.12.2014 on various grounds taken in C.W.P. No.3634 of 2015 titled as Jarnail Singh & Others Versus State of Punjab & Others, before the Hon'ble High Court, Chandigarh in which the workman was arrayed as petitioner No.3. The Executive Engineer namely Sh. Param Jyoti Arora has filed written statement on behalf of the department, to the above mentioned Writ Petition by taking the wrong pleas that the department has entered into an agreement with respondent No.4 i.e. Golden Eagle Security Services (*here-in management No.3*). It was also stated by the said Executive Engineer in the written statement that the attendance of the petitioners is in-fact countersigned by the officials of the Department to authenticate the record of the contractor as a Principal Employer. The false and wrong plea of the department were controverted by the petitioners of the said Writ Petitions including the workman with the plea that workman and another petitioners are on the rolls of the department and they are working in the department under the supervision and control of concerned S.D.O. and J.E. It was also stated in the replication that the name of Golden Eagle Security Services is mentioned in the impugned order dated 16.12.2014 in a fraudulent manner to mislead the Hon'ble High Court that the petitioners are the employees of Golden Eagle Security Services. In-fact they are employees of the department. The arguments were addressed on various dates before the Hon'ble High Court in the above-mentioned Writ Petition. C.M. No.4724 of 2016 in C.W.P. No.3634 of 2015 was filed on behalf of the workman and other workman namely Pirthi Singh - Mason for seeking directions to direct the department to release the salary of the workman, which has been withheld illegally by the department after passing the impugned order dated 16.12.2014. The department has filed reply to aforesaid C.M. by taking wrong pleas that the petitioners were not appointed by the department on daily wage basis or in any manner, as such, the question of release of salary does not arise. The Golden Eagle Security Services - management No.3 has taken the plea in its reply dated 23.05.2016 that the petitioners of the aforesaid Writ Petition were deployed by the answering respondent, who is an outsourcing contractor with the official respondents w.e.f. October 2011. As per the procedure of any outsourced contract, the attendance of the employees is initially marked at the premises of the work side under the supervision of the Principal Employer, for whom the said employees works. It was also stated in the said reply that the salary for the month of December, 2014 and January, 2015 has not been paid to Petitioner Pirthi Singh as he never reported to the office of the answering management to receive his wages. It was also stated that letter dated 22.01.2015 was written to both the workmen namely Pirthi Singh and Jasbir Singh asking them to report back to the answering respondent for further deployment elsewhere, which were received back as un-claimed. The

workman did not receive any alleged letter dated 22.01.2015 and never refused to accept the same. It was wrongly stated in the said letter by Golden Eagle Security Services that petitioner No.2 & 3 i.e. Pirthi Singh and Jasbir Singh, workmen have left the services of the answering management after 24.01.2015. The Hon'ble High Court was pleased to pass an order dated 21.07.2016, thereby directing the respondents of C.W.P. No.3634 of 2015 that in case, the salary of any of the petitioners has not been paid, the same shall be released within a period of one month. Thereafter, the workmen Pirthi Singh and Jasbir Singh have made representation dated 28.07.2016 through registered AD post, to the Executive Engineer with the request for releasing their salary w.e.f. 01.12.2014 till date in accordance with the directions issued by the Hon'ble High Court, Chandigarh on 21.07.2016. C.M. No.12883 of 2016 on behalf of the workman was again filed in the Hon'ble High Court in C.W.P. No.3634 of 2015, for seeking permission of the Hon'ble High Court to place the short affidavit dated 04.10.2016 of the petitioner No.2 - Pirthi Singh, on the record of the aforesaid Writ Petition along with the representation dated 28.07.2016. It was specifically mentioned in the representation that the salary of the workman is not paid by the department w.e.f. 24.01.2015 till to date, though he is still in his job and reporting for his duties as they were performing prior to the date of passing of impugned order dated 16.12.2014. No reply of the official of respondent No.1 to 3 to the said C.M. i.e. department of P.W.D. (B&R), Punjab, Chandigarh has been filed in the Hon'ble High Court nor rebutted this factual position brought on the record of the aforesaid writ petition and are deemed to be admitted as per law. However, the management No.3 - Golden Eagle Security Services had taken wrong pleas in its reply dated 03.12.2016 that workman namely Jasbir Singh has already been paid up to date salary till he worked and the arrears of wages amounting to ₹ 3,478/- were given to him through cheque. It was submitted before the Hon'ble High Court, during the course of arguments that no such amount, already sent through cheques, has been received by the workman and the department as well as Golden Eagle Security Services failed to establish on record of aforesaid writ petition that payment of alleged cheques were en-cashed by the workman. The managements failed to produce any record to this effect before the Assistant Labour Commissioner, U.T. Chandigarh during the pendency of conciliation proceedings. The Hon'ble High Court was pleased to admit C.W.P. No.3634 of 2015 on 20.12.2016 for regular hearing. After hearing the arguments addressed by all the parties, the matter between the parties for regularisation of services of the petitioners of the aforesaid writ petition including the workman and to set aside the impugned order dated 16.12.2014 passed by the Chief Engineer, is now pending before the Hon'ble High Court for final hearing. It was specifically pleaded in the aforesaid Writ Petition that the workman had been working in the department for the last so many years, to handle the maintenance work and was getting very meager salary in comparison to their regular counterparts. The workman was doing more arduous work than the regular counterparts and their duties were inter-changeable. The workman was getting meager salary in comparison to his regular counterparts. The department of P.W.D. (B&R), Punjab, Chandigarh has adopted noble method to exploit the daily wage workers after making deduction of 15% from their salary in the name of the company which has absolutely no concern and connection with the services of the workman. The workman has never seen the employees of the alleged company. This practice is being adopted by the department with the oblique motive that no daily wager may be able to claim his right and such practice is in violation of the provisions of Article 14, 16 and 39 of the Constitution of India. The officials of the department of PWD (B&R), Punjab have taken the wrong pleas in their written statement to the C.W.P. No.3634 of 2015 that the petitioners of the said Writ Petition including the workman were deployed through outsource agency and the Golden Eagle Security Services has first time taken the stand in the written statement dated 25.04.2016 that the petitioners have been deployed by the answering respondent with the official respondents since 2011 onwards, which fact was rebutted in the replication by the petitioners including the workman that they are in service with the department from the date of their engagement prior to the introduction of Golden Eagle Security Service in the department and could not be deployed by that company and they have been forced to approach the company after passing of the impugned order dated 16.12.2014. It was specifically pleaded in para 25 of C.W.P. No.3534 of 2014 that a legal notice dated 18.12.2014 through registered AD was served upon Maj. S. S. Bedi (Retd.) on behalf of the workman, who failed to act upon the said legal notice and an inference can be drawn that he does not have any licence of contractor and the alleged contract between the department and the company is a sham contract and is not genuine and valid and has been projected to deny the legitimate claim of

regularisation of service of the workman including the petitioners of the aforesaid Writ Petition, in view of the instructions issued by the Punjab Government from time to time. The concerned J.E. Hemant Sharma of P.W.D. (B&R), Punjab, Chandigarh has forced all the petitioners of C.W.P. No.3634 of 2015 including the workman to approach the Golden Eagle Security Services for opening their bank account, to draw their salary, which the workman did not approach Golden Eagle Security Services and this was the only reason to terminate his services. The attendance of the workman was stopped to be marked in the attendance register by Shri Hemant Sharma - J.E. as specifically pleaded in para 26 of Writ Petition No.3634 of 2015 and the Golden Eagle Security Services has taken the stand in reply dated 23.05.2016 to C.M. No.4724 of 2016 that the workman has never reported to the office of the company and has left the service. The management has misled the aforesaid fact before the Hon'ble High Court as admittedly, the workman is continuously fighting with the management, before passing the impugned order dated 16.12.2014 which has been challenged before the above said Writ Petition. The plea of abandonment taken by management No.3 Golden Eagle Security Services in the written statement to Writ Petition is erroneous, illegal, wrong, incorrect, false and was denied specifically by the workman in the representation dated 28.07.2016. The workman was not allowed to join his duty by the management w.e.f. 25.01.2015. Thus, the impugned action of the management amounts to termination of the service of the workman from 25.01.2015 is illegal, unjust, unwarranted, arbitrary, unfair labour practice and violative of mandatory provisions of the ID Act and Article 14 & 16 of the Constitution of India. Therefore, the same deserves to be undone and the workman is entitled to be reinstated into service with continuity along with back wages on the following grounds amongst others to be urged at the time of argument :-

- i) The workman has been in service of the management of P.W.D. (B&R), Punjab, Chandigarh from 01.03.2004 to 24.01.2015 continuously without any break and thereafter workman was available at the place of posting to perform his duties. The workman was not permitted to perform his duties by the management from 25.01.2015. The workman has not left the service as wrongly projected by the Golden Eagle Security Services in the Hon'ble High Court in written statement to C.W.P. No.3634 of 2015. The workman has thus, completed 240 days of service with the management when his services were terminated illegally by way of unfair labour practice. While terminating the services of the workman, he has neither been paid any retrenchment compensation nor any notice nor pay in lieu of notice was given or offered to him and no salary w.e.f. 01.12.2014 was paid to him and thus, provision Section 25F of the ID Act has been violated completely.
- ii) The impugned action of the management amounts to termination as the workman was not allowed to join his duties by the J.E. concerned namely Shri Hemant Sharma after 24.01.2015 and directed him to approach the Golden Eagle Security Services, who will only depute him in the service. The workman did not approach the Golden Eagle Security Services as he was employed by the Department but not by the company and he was terminated from services w.e.f. 25.01.2015 without passing any orders by the Department of P.W.D. (B&R), Punjab, Chandigarh.
- iii) The Department of Punjab P.W.D. (B&R), Chandigarh has played havoc with the service career of the workman. The workman was entitled to be regularized in his service as per the instructions, issued by the Punjab Government from time to time. The Chief Engineer, P.W.D. (B&R) has wrongly rejected the case of the workman, for regularization of his services, vide impugned orders dated 16.12.2014, which was challenged by the workman in the Hon'ble High Court, Chandigarh in C.W.P. No.3634 of 2015 and the said writ petition stands admitted, for regular hearing, on 20.12.2016, by the Hon'ble Bench.
- iv) The services of the workman were terminated illegally with malafide intention by the department on account of filing the C.W.P. No. 3634 of 2015 by the workman along with the other workman; titled as Jarnail Singh and others Versus State of Punjab & others.

- v) There is clear cut discrimination in the case of the workman. The Department has retained the petitioners of C.W.P. No. 3634 of 2015 namely Jarnail Singh and Gurjeet Singh in service, whereas the services of the workman have been terminated illegally after passing the impugned orders dated 16.12.2014.
- vi) After terminating the services of the workman, the management has kept fresh persons on daily wage basis but the workman was not called back and he was not allowed to join his duty and thus, the impugned action is directly hit by the provision of section 25H of the ID Act.
- vii) While terminating the services of the workman junior persons were retained in service by the management and thus, the impugned action is in violation to the provision of Section 25G of the ID Act.
- viii) The alleged plea of the abandonment projected by the Golden Eagle Security Services - management No.3, before the Hon'ble High Court, is at the instance of concerned officials of the department and the same is illegal, invalid, wrong and is not sustainable in the eyes of law. The workman has not left the service of the department, rather he was not allowed to perform his duties from 25.01.2015 by the concerned J.E. of the department and fighting continuously with the Management.
- ix) The workman was never deployed through outsource agency of Golden Eagle Security Services and the alleged contract between the department and the Golden Eagle Security Services is a sham contract and the alleged contractor has no valid license. The department is the Principle Employer of the workman as admitted by the department and the Golden Eagle Security Services in their written statement to C.W.P. No. 3634 of 2015, submitted by them in the Hon'ble High Court.
- x) The services of the workman were terminated by way of unfair labour practice. The work against whom, the services of the workman were engaged is still in existence and the workman was terminated from his service to accommodate another fresh person.
- xi) The workman has not been given any opportunity of hearing, before terminating of his services. No enquiry, charge sheet, explanation and retrenchment compensation were given or offered, to the workman and thus, the impugned termination is not sustainable in the eyes of law. Principle of natural justice has flagrantly been violated by the management in terminating the services of the workman.
- xii) No permission from the appropriate Government has been obtained by the management, before terminating the services of the workman.

3. It is further stated that the workman is not gainfully employed anywhere after the termination of his services and is totally dependent upon his parents, friends and relative, to survive with his family. The salary of the workman, which has been withheld by the management illegally and has not been paid even during the pendency of the conciliation proceedings before the Assistant Labour Commissioner, Chandigarh. The conciliation proceedings initiated by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, which failed vide failure report dated 28.03.2017. The management has failed to produce the relevant record, as directed by the Assistant Labour Commissioner, Chandigarh, and failed to pay the withheld salary of the workman; rather recorded false statement by the official of the management, on 31.01.2017, that the claim raised by the workman in the demand notice is the same, which was raised by him in the writ petition. The workman was advised, as per the aforesaid letter dated 28.03.2017, to refer the dispute and hence; the present

Statement of Claim, on behalf of the workman, to adjudicate the dispute by this Court. Prayer is made to set aside/un-done the alleged abandonment of the services of the workman w.e.f. 25.01.2015 and to reinstate the workman into service with continuity along with full back wages with interest and further to release the withheld salary of the workman with 12% interest per annum.

4. On notice, management No.1 & 2 contested the claim statement by filing joint written statement on 11.12.2017 wherein preliminary submissions are made that the present reference is not maintainable against the answering management and is bad in law for mis-joinder of parties. The answering management has never engaged the workman nor has ever paid any wages or any emoluments of whatsoever nature nor the workman has worked under the direct supervision & control of the department of PWD (B&R), Punjab in any manner. Since the workman has never been engaged as such the question of his termination, as alleged, does not arise. No order of termination much less any illegal termination order has been issued by the answering management, as such, no cause of action arises to the workman against the answering management. There is no master-servant relationship between the management and the workman. The reference may be rejected outrightly qua the answering management. The labour is being provided to the answering management through outsourcing to carry out the work of maintenance and such other allied works under the policy of the Government. The answering management had been entering into the contract agreement with different contractors including management No.3 who used to provide labour for the specified work / job as per the requirements under the contract. The periodical contract agreements and the payment details / vouchers made to the contractors for different periods are annexed with the written statement. Thus, the name of the answering management may be deleted from the array of parties at the preliminary stage itself being not relevant. The workman had earlier also filed CWP No.14790-2014 for considering his case for regularisation of service and for grant of minimum pay scale at par with regular counterpart which was disposed off by the Hon'ble High Court vide order dated 30.07.2014 with a direction to the answering management to consider and decide the case in accordance with law, by passing an appropriate order within period of three months. In compliance with the order of the Hon'ble High Court, the answering management considered the case of the workman in accordance with law and in the light of facts of the case and record. The facts of the case reveals that the petitioner (here-in workman) including other petitioners in the Writ Petition are deployed through outsource agency i.e. Golden Eagle Security Services, SCO 2475-76, Sector 22-C, Chandigarh, as per the policy of the Government of Punjab as the ban was imposed for engaging the casual labour. The workman has been paid by the agency. The attendance, supervision, control or the action against the workman, if any, falls within the purview of contractor-management No.3. EPF No.PB/CHD/0014802/000/0006602 and ESI No.1713077791 have been issued to the workman by the respective department, which are public document and its veracity cannot be denied unless proved contrary. The said details categorically reflect the name of management No.3 as the employer of the workman. In the light of the facts, the claim of the petitioner (here-in workman) was rejected vide speaking order dated 16.12.2014. Even the contempt petition No.3452 of 2014 (O&M) of the petitioner (here-in workman) was rendered infructuous vide order dated 09.02.2015. However, the petitioner (here-in workman) challenged the speaking orders dated 16.12.2014 vide CWP-3634 of 2015 which is pending adjudication before the Hon'ble High Court. The copy of the order dated 30.07.2014 and speaking orders dated 16.12.2014 are annexed with the written statement. The workman has deliberately suppressed and concealed the material facts to gain undue advantage. The management No.3 has also filed reply after being impleaded as party before the Hon'ble High Court wherein they have categorically admitted that the workman was engaged by them and the workman is their employee for all intents & purposes. The claim of the workman deserves to be dismissed on this ground alone qua the answering management as no employer-employee has ever been established with cogent evidence in support. The present reference is further liable to be dismissed as the Hon'ble Apex Court has already settled the law in the similar situated cases in the case of *Secretary, State of Karnataka Versus Uma Devi* which is followed by various benches and passed the catena of judgments holding that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.

Thus, in the light of the aforesaid judgment passed by the Hon'ble Supreme Court, it would not be appropriate to open the debate on the law which has formed the uniformity.

5. Further on merits, it is stated that the workman has never been engaged nor paid any wages nor is under the supervision and control of the answering management. The workman has never been appointed nor any appointment letter was ever issued. Thus, the selection process or any joining in the department does not arise. It is denied that the workman was working to handle the work as assigned to him by the officers of the department, as alleged. However, the record reveals that the answering department had been entering into contract agreements with the different contractor including management No.3 under the policy of Government of Punjab and the Labour was deployed through outsourcing for completion of different job assigned to the answering management. The labour deployed through outsourcing is under the direct control of the contractor and he is responsible for the attendance and wages and action, if any, for all intents and purposes. The EPF statement for the year 2011-12, 2012-13 & 2013-14 and ESI contribution return for the month of 10/2011 to 03/2015 leaves no doubt that the workman was engaged by the management No.3 and the answering management is not involved in any manner. The management No.3 is in a better position to reply the same. The workman has concocted the story to gain the un-due advantage from this Court. More so the workman has already challenged the issue of regularisation before the Hon'ble High Court which is pending adjudication nor such issue can be decided by this Court being not referred by the Government. The averments are neither supported by any cogent evidence nor can be relied being not in reference, as such no further reply can be offered by the answering management at this stage. It is a matter of record that the workman made detailed representation dated 08.03.2014 to the management No.1 & 2 through registered post and that the workman in his representation requested for regularisation of his services on the post of *Beldar* and to grant him salary in the regular payscale on the bases of instructions issued by Government of Punjab from time to time. The representation of the workman was considered at length and the appropriate orders were passed and conveyed to the workman. The matter is pending adjudication before the Hon'ble High Court and such averments irrelevantly mentioned here as the case of regularisation is not under reference. No wrong pleas have been taken by the Executive Engineer as alleged, rather the workman has always concealed and suppressed the material facts from the respective Courts to gain undue advantage and have denied the veracity of public documents and defaming the officials by naming them in their personal capacity to pressurise them for getting his illegal claim. The answering management being the principal employer has performed its duty and there is no illegally, as alleged by the workman. The plea whatsoever taken by the workman were even also earlier considered at length and the appropriate orders were passed and conveyed to him. The matter is pending adjudication before this Court and such averments have irrelevantly mentioned here as the case of regularisation is not under reference. Further, similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are denied as wrong. Prayer is made that claim of the workman qua the answering management may be dismissed.

6. Management No.3 contested the claim statement by filing separate written statement / reply on 30.01.2018 wherein preliminary submissions are made that the present reference is not maintainable against the answering respondent (here-in-after management) and is bad in law for mis-joinder of parties. A bare perusal of statement of claim filed by the workman would show that the workman has impleaded three parties including the answering management and it is not clear as to who is his employer and from whom he is claiming the relief. There cannot be more than one employer of a workman/ employee at any point of time. The present reference being vague and untenable may be dismissed. The workman along with other workers has already filed CWP No.3634 of 2015 titled as *Jarnail Singh & Others Versus State of Punjab & Others* on 23.02.2015, whereas the workman was not on the rolls of answering management and had already abandoned the job w.e.f. 24.01.2015. The answering management filed detailed reply to the said writ petition wherein it is specifically mentioned that the workman was no longer on the roll of answering management w.e.f. 24.01.2015. No order of termination much less any illegal termination order has been issued by the answering management,

rather the workman himself abandoned the job of the answering management and never reported back on duty. The answering management asked the workman several times orally and even wrote letters to the workman asking him to report back on duty for further deployment elsewhere, but the workman refused to receive the letter sent by registered post. Hence, the workman having himself abandoned the job of the answering management cannot raise a claim for reinstatement. The answering management never terminated the services of the workman rather the workman himself abandoned the job. The workman is claiming salary which relief / claim of the workman has been claimed in civil miscellaneous application filed in CWP No.3634 of 2015 which is pending before the Hon'ble High Court and stands admitted. Copy of order dated 20.12.2016 passed by the Hon'ble High Court admitting the writ petition are annexed with the written statement. The workman has been paid up to date salary by the answering management till he worked with the answering management. Copy of reply filed by the answering management showing the payment of salary paid to the workman by cheque, till he was in service of the answering management is annexed with the written statement.

7. Further on merits, it is stated that the workman was deployed by the answering management with the management No.2 w.e.f. year 2011. The attendance was initially marked by the management No.2, thereafter the same was sent to the answering management for disbursement / payment of salary to the workman. The workman worked till 23.01.2015 thereafter the workman left the services of the answering management of his own volition. The averments made in the claim statement relating to prior to year 2011 are denied for want of knowledge as the same pertains to management No.1 & 2. The workman was deployed by the answering management with the management No.2 w.e.f. year 2011. The attendance was initially marked by management No.2 and thereafter sent to the answering management for disbursement of salary and the workman worked till 23.01.2015 and thereafter left the job and never reported for duty with the answering management, inspite of the answering management asking the workman repeatedly to report back for duty for deployment at some other place. It is denied for want of knowledge that the workman had made representation dated 08.03.2014 to the managements No.1 & 2 and requested for regularisation of his service, grant of salary in the regular pay scale on the basis of the instructions issued by the Punjab Government from time to time. It is denied for want of knowledge that workman had filed CWP No.14790 of 2014. It is denied for want of knowledge that the management No.3 is impleaded as a party in CWP No.14790 of 2014. It is admitted to the extent that the workman has filed CWP No.3634/2015 along with other workmen which is pending before the Hon'ble High Court and the same stand admitted. The workman is claiming salary from the officials of management and the answering management has already paid salary to the workman till he worked with the answering management. The workman cannot claim same relief from different two Courts as such the claim qua salary is not maintainable as the workman was never in service after 23.01.2015 till which date the workman has already been paid his due salary by the answering management being its employer. It is admitted to an extent of filing of Civil Miscellaneous Application by the workman in the Hon'ble High Court claiming salary from the department. The due wages for the period the workman was in service have already been paid by the answering management, which fact was mentioned by the answering management in its reply to Civil Miscellaneous Application stating therein that the salary has been paid to the workman till he as in service of the answering management i.e. 23.01.2015 being an employer. The answering management in compliance of the orders passed by the Hon'ble High Court sent the wages / arrears of wages to the workman till he was in service of the answering management by registered post, on 17.08.2016 which was duly received by him and the same was placed on the record in the Hon'ble high Court. The workman did not specify as to which management has withheld his salary. Since matter is already pending before the Hon'ble High Court and the same stands admitted, the workman cannot claim the same relief through present reference. CWP No.3634 of 2015 is pending before the Hon'ble High Court for adjudication. It has become mandatory for all the employers to pay salary of their employees through bank. However, the averment of the workman that the services of the workman have been terminated is vehemently denied. Further similar stand is taken in the preliminary submissions. Prayer is made that the present reference may be dismissed being legally not maintainable and devoid of merits.

8. The workman filed joint replication on 09.01.2018 to the joint written statement of managements No.1 & 2 and management No.3 on 08.03.2018 filed separate replication to the written statement of the claimant-workman, wherein the contents of the respective written statements except admitted facts are denied as wrong and averments of claim statement are reiterated.

9. From the pleadings of the parties, following issues were framed vide order dated 08.03.2018 :-

1. Whether there is no employer-employee relationship between management No. 1 & 2 and workman ? OPM-1&2
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

10. In evidence, workman Jasbir Singh examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with documents Mark 'A' to Mark 'C'.

Mark 'A' is photocopy of attendance register for the month of July, 2012 incorporating name of the workman Jasbir Singh (*Beldar*) at serial No.4.

Mark 'B' is photocopy of attendance register for the month of December, 2013 incorporating name of the workman Jasbir Singh (*Beldar*) at serial No.3.

Mark 'C' is also photocopy of attendance register for the month of December, 2013 incorporating name of the workman Jasbir Singh (*Beldar*) at serial No.3.

11. Workman examined AW2 Rahul Dhiman - Clerk, South Indian Bank, SCO No.2475, Sector 22-C, Chandigarh, who brought the summoned record and tendered into evidence document Exhibit 'AW2/1'.

Exhibit 'AW2/1' is letter bearing No. BR/0404/GEN/312/2019-20 dated 07.01.2020 issued by South Indian Bank, Branch Chandigarh, SCO No.2475-76, Sector 22-C, Chandigarh.

12. Workman examined AW3 Hemant Sharma - Retired Junior Engineer, Chief Engineer, PWD, Punjab, who proved his signatures Exhibit 'W2' to Exhibit 'W4' on in the attendance record as Mark 'A' to 'C'.

13. On 26.08.2022 Learned Representative for the workman closed the evidence.

14. On the other hand, management No.1 & 2 examined MW1 Gurmeet Singh - Senior Social Security Assistant (SSSA), O/o E.P.F.O., Sector 17-D, Chandigarh, who brought the summoned record in respect of EPF account No. PBCHD00148020000006602 in the name of Jasvir Singh S/o Nirmal Singh and tendered into evidence copy of statement of account for the period 01.10.2011 to 21.10.2022 vide Exhibit 'M1'.

15. Management No.1 & 2 also examined MW2 Gurmeet Singh - Assistant in the office of E.S.I.C, Sector 29, Chandigarh, who brought into evidence documents Exhibit 'M2' to Exhibit 'M4'.

Exhibit 'M2' is authority letter dated nil issued in his favour by Branch Manager, ESIC, Chandigarh.

Exhibit 'M3' is record of contribution of ESI w.e.f. 01.10.2010 to 30.09.2015.

Exhibit 'M4' is ledger sheet in respect of the account opened in the name of Parthi Singh for the period 01.10.2010 till 30.09.2015.

16. Management No.1 & 2 examined MW3 Ranjeet Singh Sandhu - Sub-Divisional Engineer, Sub-division No.3, PWD (B&R), Punjab, who tendered into evidence his affidavit Exhibit 'MW3/A' along with attested copies of documents Exhibit 'MW3/1' to Exhibit 'M3/15'.

Exhibit 'MW3/1' is tender dated 30.07.2013.

Exhibit 'MW3/2' is tender dated 27.09.2013.

Exhibit 'MW3/3' is tender dated 27.12.2013.

Exhibit 'MW3/4' is tender dated 25.03.2014.

Exhibit 'MW3/5' is tender dated 30.06.2014.

Exhibit 'MW3/6' is tender dated 26.09.2014.

Exhibit 'MW3/7' is tender dated 26.12.2014.

Exhibit 'MW3/8' is tender dated 30.03.2015.

Exhibit 'MW3/9' is tender dated 30.06.2015.

Exhibit 'MW3/10' is monthly payment details for the period 02.04.2014 to 11.06.2015 (in tabular form).

Exhibit 'MW3/11' is ledger account for the period April 2011 to 31.03.2012.

Exhibit 'MW3/12' is ledger account for the period w.e.f. 01.04.2012 to 31.03.2013.

Exhibit 'MW3/13' is ledger account for the period w.e.f. 01.04.2013 to 31.03.2014.

Exhibit 'MW3/14' is order dated 30.07.2014 of Hon'ble High Court in CWP No.14790 of 2014.

Exhibit 'MW3/15' is order dated 16.12.2014 passed by Chief Engineer H.Q., PWD (B& R) Patiala.

17. MW3 is also proved the documents Exhibit 'M1', Exhibit 'M3' and Exhibit 'M4' which were already exhibited. (All documents objected to on the ground of admissibility and mode of proof. Objection was kept open to be decided at the time of arguments). During cross-examination of MW3 conducted by management No.3, document i.e. letter No.29 dated 16.01.2015 / **Exhibit 'MX'** issued by Office of Sub-division No.3, PWD (B&R), Punjab, Chandigarh was put to him.

18. Management No.3 examined MW4 Gurkanwal Virk - Partner, M/s Golden Eagle Security Services who tendered into evidence her affidavit Exhibit 'MW4/A' along with photocopies of documents Exhibit 'M4/1' to Exhibit 'M4/3' and Exhibit 'MX' (Exhibit 'MX' already on record).

Exhibit 'M4/1' is letter dated 22.01.2015 issued by Major S.S. Bedi (Partner) to Pirthi Singh relating to the subject of reduction of work of *Beldar* sent through registered post accompanied with copy of postal receipt dated 22.01.2015.

Exhibit 'M4/2' is letter dated 22.01.2015 issued by Major S.S. Bedi (Partner) to Pirthi Singh relating to the subject of reduction of work of *Beldar*.

Exhibit 'M4/3' is letter dated 22.01.2015 addressed from Major S.S. Bedi (Retd.) Partner of Golden Eagle Security Service to Sub-Divisional Engineer, Provisional Sub-Division No.3, Punjab, PWD (B&R), Sector 24, Chandigarh. **Exhibit 'MX'** is letter dated 16.01.2015.

19. On 05.10.2023, Learned Representative for the management No.1 & 2 closed the evidence on behalf of management No.1 & 2. Learned Representative for management No.3 closed oral evidence on 08.02.2024 and closed documentary evidence on 16.04.2024.

20. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

21. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

22. Onus to prove issue No.1 is managements No.1 & 2 and onus to prove issue No.2 is on the workman.

23. To prove the claim statement, workman Jasbir Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Mark 'A' to Mark 'C'.

24. Learned Representative for the workman referred testimony of AW2 Rahul Dhiman - Clerk, South India Bank, who deposed that he has brought the summoned record. The cheque No.404744 dated 28.08.2016 pertaining to account No.0404073000000021, which is being maintained by M/s Golden Eagle Security Services in their branch. The aforesaid cheque was never presented in their branch for encashment through clearance as is reflected from certificate dated 07.01.2020 issued by the Branch Manager of their branch, whose signature he identifies and the same is Exhibit 'AW2/1'.

25. Learned Representative for the workman further referred the testimony of AW3 Hemant Sharma - JE (retired), who deposed that he is summoned witness. He has retired from service on 31.03.2020 from the PWD, Punjab. He was working in Provincial Sub-Division No.II & III, Punjab PWD up to the period of 31.03.2020. He used to attend the proceedings in the above noted case as and when he was called. It is a matter of record. He was serving the department on 25.04.2018. The record as sought to be produced on behalf of the workman was to be produced by the department in compliance of application dated 25.04.2018. The workman Jasbir Singh was serving the department. AW3 voluntarily stated that he was sent through agency. AW3 further stated that he does not know whether the workman was working with the department from 01.01.2000 as Mason. He has seen his signatures at point 'A' on Mark 'A'. He has seen documents Mark 'B' to 'C' which bears his signatures at point 'B' & 'C'. He had worked as Junior Engineer in Sub-Division No.2 & 3. Both the Sub-Divisions are under Executive engineer, Provincial Division, Sector 17, Chandigarh. On the last date during his testimony he had seen documents Mark 'A' to Mark 'C' on the judicial file but he could not verify the same as there is no official record with respect to aforesaid documents. No instructions were received from the department to maintain the above said documents. The documents Mark 'A' to 'C' bears his signatures Exhibit 'W1' to 'W3' respectively and he identify the same. He does not know if Malkit Singh - Beldar was working on regular post of the department. The official Malkit Singh, Pirthi Singh, Gurjit Singh and Jasbir Singh were working in their department. They were deployed through outsource agency. There is no document to show that the above said officials were deployed through outsource agency. Pirthi Singh has also filed the case with regard to his termination which is pending in this Court. He used to attend the Court proceedings of the present case and the case of Pirthi Singh.

26. On the other hand, in order to prove the plea that the management No.1 & 2 are the principal employer and management No.3 is the employer / contractor of the workman, Learned Representative for management No.1 & 2 referred the testimony of MW1 Gurmeet Singh - Senior Social Security Assistant (SSSA) in the office of E.P.F.O Sector 17-D, Chandigarh, who deposed that he is summoned witness. He has brought the entire record in respect of Account No. PB/CHD/0014802/000/0006602 opened on 01.10.2011 in the name of Jasvir Singh S/o Nirmal Singh. As per record he is stated to be working with Golden Eagle Security. The employer has been allotted Member I.DNo.PB/CHD/0014802/000/0006602. Till date the said account is operational however no contribution is made after January, 2015. The copy of statement of account for the period 01.10.2011 to 21.10.2022 is Exhibit 'M1'.

27. For corroboration Learned Representative for management No.1 & 2 referred the testimony of MW2 Gurmeet Singh - Assistant in the office of E.S.I.C, Sector-29, Chandigarh, who deposed that he is summoned witness. Authority letter dated nil issued in his favour by Branch Manager, ESIC, Chandigarh is Exhibit 'M2'. He has brought the entire record in respect of Insurance No.1713077791 Employer's Code No.17000417240001001 issued in the name of M/s Golden Eagle Security Services, SCO 2475-76, Sector 22-C, Chandigarh. He has brought the record of contribution w.e.f. 01.10.2010 to 30.09.2015 vide Exhibit 'M3' along with ledger sheet in respect of the account opened in the name of Parthi Singh (perusal of Exhibit 'M4' would reveal that account No.1713077791 relates to Jasbir Singh) which is also for the period 01.10.2010 till 30.09.2015 is Exhibit 'M4'. As per record the account remained operational till 31.03.2015. The account was opened w.e.f. 01.10.2011.

28. In order to prove the pleas taken in the written statement Learned Representative for management No.1 & 2 referred the testimony of MW3 Er. Ranjeet Singh Sandhu - Sub-Divisional Engineer, O/o Sub-Division No.3, PWD (B&R), Punjab, Chandigarh, who vide his affidavit Exhibit 'MW3/A' deposed all the material contents of the written statement which are not reproduced here to avoid repetition. MW3 supported his oral version with documents Exhibit 'M3/1' to Exhibit 'M3/15' and documents already exhibited vide Exhibit 'M1', Exhibit 'M3' and Exhibit 'M4'. The objection raised by Learned Representative for the workman on the ground of admissibility and mode of proof of documents Exhibit 'MW3/1' to Exhibit 'MW3/15' is not sustainable because documents Exhibit 'MW3/1' to Exhibit 'MW3/15' are duly attested by the Sub-Divisional Engineer, Provincial Sub-Division No.3, Pb. PWD (B&R) Branch Chandigarh. Besides, these documents are produced from the office record maintained in the office of the management No.1 & 2 in the regular course of employment. Moreover, in cross-examination conducted by Learned Representative for the workman, MW3 stated that today he has brought the original documents.

29. In order to prove the fact that the workman was engaged by the contractor / management No.3 and deployed with the management No.1 & 2, Learned Representative for management No.3 referred the testimony of MW4 Gurkanwar Virk - Partner, M/s Golden Eagle Security Services, Chandigarh, who vide her affidavit Exhibit 'MW4/A' deposed that she is one of the partner of M/s Golden Eagle Security Services, Chandigarh and is fully conversant with the facts of the case on the basis of personal knowledge and record. She is competent to appear, represent, swear the affidavit, produce the documents and deposed before this Hon'ble Court. She has filed reply of the statement of claim filed by the workman alleging his illegal termination, the contents thereof may be read as part & parcel of this affidavit as well. MW4 further deposed that the present reference is not maintainable against the deponent firm and is bad in law for mis-joinder of parties. The workman has necessarily impleaded the deponent as a party in the present reference, although no relief is claimed by the workman from the deponent, which facts are admitted by the workman in his cross-examination wherein he categorically admits that the deponent firm has just been made a party due to objection raised by management No.1 & 2 and that no relief whatsoever is claimed by the workman against the deponent firm. Hence, the present reference being vague and untenable may be dismissed qua the deponent. The averment made by the workman in his statement of claim and in his evidence by way of affidavit mainly pertains to the averments made by the workman in Civil Writ Petition No.3634/2015 filed by the workman along with other workers which is pending adjudication before the Hon'ble High Court and which facts is admitted by the workman in his evidence and cross-examination as well. The deponent firm is doing the work of supply of manpower to different departments / establishments etc. The workman was appointed by the deponent as *Beldar* and deployed with the official respondent i.e. respondent No.2 w.e.f. October 2011 in response to the tender floated by the official respondents requiring labour on contract basis from time to time and for a specific period. The deponent received a letter No.29 dated 16.01.2015 from official respondents i.e. Sub-Divisional Engineer, Provincial Sub-Division No.3, Punjab, PWD (B&R), Chandigarh regarding reduction of manpower in the category of Mason and Beldar, one post each w.e.f. 24.01.2015. Copy of the original letter dated 16.01.2015 received by the deponent from the official respondent is already on record as Exhibit 'MX'

in the evidence of MW3. The deponent on receipt of letter dated 16.01.2015 from the official respondent asked the workman to report back to the deponent firm on 24.01.2015 for further instructions for the deployment vide letter dated 22.01.2015 but the workman never reported back to the deponent and as such abandoned the job of his own volition. The copy of letter dated 22.01.2015 was sent to the workman by registered post on 22.01.2015 and personally as well through official of management, on 23.01.2015 and 24.01.2015 but the workman refused to accept the same and noting to that effect was endorsed by the official on the letter on 24.01.2015. Copies of the letters sent to the workman are Exhibit 'M4/1' and Exhibit 'M4/2'. The letter sent by registered post was received back by the deponent as unclaimed. An intimation to that effect was also sent to the official respondent vide letter No.GESS/PWD-3/14-15/4292 on 22.01.2015 itself. Copy of the letter sent to the official respondents is Exhibit 'M4/3'. The deponent never terminated the service of the workman rather she asked the workman several times orally and in writing to come and report to the deponent, on 24.01.2015 for further instructions with respect to deployment somewhere else but the workman never reported to her which fact is admitted by the workman in his cross-examination. MW4 further deposed that she had already paid the salary / wages to the workman till he was in service of the deponent firm. However, in compliance of the orders passed by the Hon'ble Court the deponent sent the pending arrears of wages to the workman on 17.08.2016 by registered post. The allegation of the workman that his services were terminated by unfair labour practice by the managements is totally false and unwarranted against the deponent firm, in view of the categorical statement made by the workman in his evidence (cross-examination) that the deponent firm (management No.3) has not terminated his services and further that he is claiming no relief against the deponent firm i.e. management No.3, the present reference is liable to be dismissed qua the deponent firm.

30. From the oral as well documentary evidence led by the parties, it comes out that the workman was engaged by the contractor M/s Golden Eagle Security Services / management No.3 w.e.f. 01.10.2011. The contractor-management No.3 in response to the tender floated by management No.1 & 2 requiring labour on contract basis from time to time and for a specific period, appointed the workman as a *Beldar* and deployed him with the office of management No.1 & 2 w.e.f. October 2011. This fact is fully proved from accounts statement Exhibit 'M1' which show that M/s Golden Eagle Security Services covered the workman under the EPF scheme by opening his EPF account No.PB/CHD/0014802/000/0006602 on 01.10.2011 and also covered him under the ESI scheme w.e.f. 01.10.2011. Exhibit 'M1' is proved into evidence by MW1 Gurmeet Singh. When put to cross-examination by Learned Representative for the workman MW1 stated that no individual EPF account of workman is opened by the employee, however, it is opened through the employer and the accounts are individually maintained in the ledger. MW1 further stated that the EPF account is opened by the management i.e. Golden Eagle Security Services. The said account / Exhibit 'M1' bears the employer code which shows that the account was opened by the Golden Eagle Security Services. MW1 in his cross-examination further stated that the list of employees is obtained online from the contractor for the purpose of opening EPF account. MW1 denied the suggestion as wrong that the workman Jasbir Singh was not included in the list of employees sent by the management. MW1 further stated that last contribution of EPF is of January 2015 relating to Jasbir Singh. Month-wise contribution is deposited in the EPF account by the employer. The EPF account with employer code No.PB/CHD/0014802/000/0006602 was opened w.e.f. 01.10.2011. As proved from Exhibit 'M3' under the ESI scheme the workman was allotted insurance No.1713077791 and M/s Golden Eagle Security Services has employer's code No.17000417240001001. From Exhibit 'M4' it is further proved that the contractor has deposited the contribution of EPF of the workman for the period 01.10.2011 till January 2015. Documents Exhibit 'M3' and Exhibit 'M4' are proved into evidence by MW2 Gurmeet Singh. When put to cross-examination by Learned Representative for the workman MW2 stated that it is correct that the workman was deployed in PWD Department on the basis of which the record is maintained. The share of ESIC contribution of employee is deposited by his employer. MW2 in his cross-examination further stated that the name of the workman is mentioned at serial No.225 of Exhibit 'M3' and Exhibit 'M4' but his name is spelled as Jasvir Singh instead of Jasbir Singh. To my opinion, the identity of the workman Jasbir Singh cannot be disputed merely on the ground that his name is incorrectly spelled as Jasvir Singh instead of Jasbir Singh in the

record of ESIC. By making reference to the version of MW2 in his cross-examination Learned Representative for the workman contended that the record is sent by department of PWD to ESI and laid much stress upon the fact that the workman is actually employee of PWD Department and that is why the record is sent by PWD to ESI. To my opinion, the above referred version of MW2 does not prove the workman's plea that he is employee of PWD Department and not of the contractor because on request of Learned Representative for management No.1 & 2, MW2 was allowed to be re-examined on account of ambiguity relating to the record of PWD Department. MW2 in his re-examination stated that he has mentioned the employer's name as PWD Department from the title of the case mentioned on the summons issued for dated 05.01.2023. In the summon record produced by him it is not mentioned anywhere that PWD Department has sent any record to ESI Department. When put to further cross-examination by Learned Representative for the workman, MW2 stated that he can produce the ESI record only pertaining to Golden Eagle Security Services. MW2 in his cross-examination admitted as correct that they did not give any benefit of ESI during the period from October 2011 to March 2015 to the workman. To my opinion, the fact that the workman has not availed any benefit of ESI during the period October, 2011 to March, 2015 is no ground to assume that the workman is not the employee of the contractor. Workman Jasbir Singh /AW1 in his cross-examination conducted by the managements No.1 & 2 stated that no EPF and ESI were ever deposited in his name. Documents 'R13' and 'R14' attached with the written statement filed by management No.1 & 2 were shown to the witness but the witness denied the knowledge of said documents. AW1 in his cross-examination denied as incorrect that any EPF or ESI number has been allotted to him. AW1 further stated that he has not worked with M/s Golden Eagle. To my opinion, in view of documents Exhibit 'M1', Exhibit 'M3' and Exhibit 'M4' the version of the workman that he was not allotted any EPF or ESI number and that he has not worked with the contractor M/s Golden Eagle Security Services stands falsified. AW1 in his cross-examination admitted as correct that he had got issued legal notice to the contractor but they had not replied to the same. To my opinion, in case workman had no concern of any kind with the contractor then what was the necessity to the workman to issue legal notice to the contractor.

31. It is argued by Learned Representative for the workman that the workman was appointed as *Beldar* by the Executive Engineer, Punjab PWD (B&R), Chandigarh on daily wage basis after following the regular process of selection without any written appointment letter and the workman joined his duty in his department on 01.04.2002. On the other hand, Learned Representatives for management No.1 to 3 vehemently opposed this argument and contended that in fact that the workman was deployed by contractor - management No.3 with the management No. 2 w.e.f. October, 2011 being contractual employee. To my opinion, the workman has miserably failed to prove the fact that he was appointed after following the regular process of selection by the Executive Engineer, PWD (B&R), Punjab, Chandigarh. In this regard, AW1 when put to cross-examination by management No.1 & 2 stated that he was engaged as daily wager after an interview conducted by Shri Vishnu - Junior Engineer. They were many candidates who were interviewed. They were verbally called for interview through other permanent employees of the department. AW1 denied the suggestion as wrong that the above stated official has no authority to conduct any interview or engage any person directly. AW1 denied the suggestion as wrong that these persons have not conducted his interview. AW1 further stated that there was no written test. He has not placed on record any document to show that he has joined his duty on 01.04.2002. The aforesaid version of AW1 would support the plea of managements No.1 & 2 that the workman has never been appointed by management No.1 & 2 and the question of selection process or any joining in the department does not arise. To my opinion, no doubt the selection process differs from department to department, industry to industry, company to firm and even within the same organisation's departments. But generally the selection process is described as the procedure of identifying and short listing qualified candidate with the requisite qualifications and skill set to fill the vacancy. In the present case, as proved from the above referred version of AW1, there was no written test and there is no result list of the candidates, who were allegedly interviewed along with the workman for the post of *Beldar*. The version of AW1 that they were called for interview verbally through other permanent employees of the department finds

no corroboration. The workman has not named or examined any permanent employee of management No.1 & 2, who called him for an interview. It is not the case of the workman that the department of management No.1 & 2 had issued any publication of post in the news-paper or through any other mode of information to the general public. All these facts would suggest that no selection process was carried out by the management No.1 & 2. On the other hand, from the entries of record of EPF / Exhibit 'M1' and ESI / Exhibit 'M3' & Exhibit 'M4', it is duly proved on record that the contractor employer M/s Golden Eagle Security Services / management No.3 has appointed the workman w.e.f. 01.10.2011. From the date of appointment i.e. 01.10.2011 up to 24.01.2015 the workman was covered by his employer i.e. contractor / management No.3 under the EPF and ESI scheme. MW1 in his cross-examination conducted by Learned Representative for the workman stated that the last contribution of EPF is of January, 2015 relating to Jabsir Singh. MW2 stated that the share of ESIC contribution of employee is deposited by his employer. The oral denial of the workman to the suggestion that he has been allotted EPF and ESI number and denial to the suggestion that he worked with the contractor is not acceptable in view of the documentary record Exhibit 'M1' and Exhibit 'M3' and Exhibit 'M4'. The relevant portion of cross-examination of AW1 is reproduced as below :-

"It is incorrect that any EPF or ESI number has been allotted to me nor I have worked with any contractor. I have not worked with M/s Golden Eagle."

32. Learned Representative for the workman argued that the contract between the principal employer and the contractor on the basis of alleged tenders Exhibit 'M3/1' to Exhibit 'M3/9' is a sham, nominal or mere a camouflage to deny employment benefits to the workman whereas in fact the workman is the direct employee of management No.1 & 2 (here-in principal employer). On the other hand, it is argued by Learned Representative for management No.1 & 2 that the workman was engaged by the contractor - management No.3 and was deployed to work with management No.2 w.e.f. 01.10.2011 and the workman remained in the employment of the contractor up to 24.01.2015. The contractor - management No.3 used to control and supervise the work of the workman. Consequently, the workman was direct employee of the contractor and there was no relationship of employer and employee between the principal employer i.e. managements No.1 & 2 and the workman. To support his arguments Learned Representative for the management No.1 & 2 referred the judgment titled as ***International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374*** wherein the expression 'control and supervision' in the context of contract labour has been explained by the Hon'ble Apex Court of India in para38 and 39 as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer; if the salary is paid by a contractor; if the right to regulate the employment is with the contractor; and the ultimate supervision and control lies with the contractor."

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

33. In the present case, workman / AW1 when put to cross-examination by Learned Representative for management No.1 & 2 stated that he has no document to show that he was paid any salary by Shri

Sukhwinder Singh and Shri Charanjit Singh - Sub-Division Clerk after obtaining his signatures on the register. He does not know on which register he used to sign. He does not know if any revenue stamp was fixed on the register which he allegedly signed on receipt of salary. The payment was made in cash by Sub-Divisional Clerk (SDC). The version of AW1 that he was paid salary in cash by SDC is not substantiated with any documentary proof i.e. any receipt or payment voucher issued by SDC of management No.1&2 towards payment of salary in cash to the workman. It is undeniable fact that the petitioner Jarnail Singh & Others including the workman had filed Civil Writ Petition No.3634 of 2015 (O&M) titled as Jarnail Singh & Others Versus State of Punjab & Others before the Hon'ble High Court of Punjab & Haryana at Chandigarh wherein the workman moved an application for release of pending salary since December 2014 to January 2015. In the said Civil Writ Petition the contractor M/s Golden Eagle Security Services was impleaded as respondent No.4. AW1 in his cross-examination conducted by management No.1 & 2 admitted as correct that he had moved an application for release of pending salary since December 2014 to January 2015. The order dated 21.07.2016 passed by the Hon'ble High Court in CWP No.3634 of 2015 (O&M) would prove the fact that in view of the statement made by Learned counsel for the respondent No.4 (herein contractor - management No.3) that salary has been paid, the Hon'ble High Court ordered that in case the salary of the petitioner has not been paid, the same be released within a period of one month. For better appreciation relevant portion of order is reproduced as below :-

"Learned Counsel for the petitioners states that salary of some of the petitioners have not been paid, whereas Learned Counsel for respondent No.4 submits that salary has been paid. However, in case the salary of any of the petitioner has not been paid, the same be released within a period of one month."

34. The aforesaid order of the Hon'ble High Court would strengthen the plea of the contractor - management No.3 (respondent No.4 in CWP) that the contractor had been paying salary to the workman. It is not the plea of the workman in this case that in compliance with order dated 21.07.2016, the contractor M/s Golden Eagle Security Services has not made the payment of due salary to him. AW1 in his cross-examination denied the knowledge of the statement made by management No.3 regarding payment to the workman. In this regard, AW1 in his cross-examination conducted by management No.1 & 2 stated that he does not know whether in the Hon'ble High Court any statement has been made by the management No.3 regarding payment to workman. To my opinion, the workman appears to have deliberately denied the knowledge of statement made by management No.3 regarding payment to workman because while passing order dated 21.07.2016 the workman along with the petitioner was represented by Shri R. K. Gautam - Advocate, therefore, the workman is supposed to have the knowledge of the order dated 21.07.2016. MW4, Partner of M/s Golden Eagle Security Services when put to cross-examination by management No.1 & 2 admitted as correct that M/s Golden Eagle Security Services is impleaded as party since demand notice raised by the workman. MW4 admitted as correct that from the month of October 2011, till date workman abandoned the job i.e. 24.01.2015, the workman was employee of M/s Golden Eagle Security Services and during the aforesaid period they have paid wages to the workman. MW4 admitted as correct that the present claim the workman has challenged his abandonment of his job. MW4 admitted as correct that they had paid wages to the workman in compliance of order dated 21.07.2016 of Hon'ble High Court. Jasbir Singh was working as *Beldar* with their partner-firm. The workman has not placed on record any document to show that he had joined his duty on 01.04.2002. AW1 further stated that Shri Hemant Sharma - JE used to mark his attendance w.e.f. 2009 till 25.01.2015 (till the date of alleged termination). AW1 stated that he has placed on record his attendance of July 2012 (Mark 'A' to Mark 'C'). These documents have been written by Shri Hemant Sharma - JE in his own writing including the attendance made therein. He does not have the original of Mark 'A' to Mark 'C'. He has not placed on record any document to prove his working with the department Mark 'A' to Mark 'C'. He has not given any written complaint for not providing any appointing letter. The workman has examined AW3 Hemant Sharma to prove the attendance record of Mark 'A' to 'Mark 'C'. AW3 in his examination-in-chief stated that on the last date during his testimony he had seen documents Mark 'A' to Mark 'C' on the judicial file but he could not verify the same as there is no official record with respect to aforesaid documents. No instructions were received from the department to maintain the above said documents. The documents Mark 'A' to 'C' bears his signatures Exhibit 'W1' to 'W3' respectively and he identify the same. To my opinion, the documents Mark 'A' to Mark 'C'

are not sufficiently proved into evidence for want of original record. Even if AW3 has admitted the signatures Exhibit 'W1' on copy of attendance register of July 2012 / Mark 'A', his signatures Exhibit 'W2' on copy of attendance register of December 2013 / Mark 'B'. The workman has placed on record two copies of same register of December, 2013 as Mark 'B' & Mark 'C'. AW3 has admitted his signatures Exhibit 'W3' on second copy of attendance register of December, 2013 / Mark 'C'. To my opinion, the identification of signatures by AW3 on attendance register of July 2012 / Mark 'A' and December 2013 / Mark 'B' & 'C' is insufficient to prove the genuineness of the said attendance record because AW3 Hemant Sharma in his examination-in-chief categorically stated that no instructions were received from the department to maintain the above said documents. The documents Mark 'A' to Mark 'C' (Mark 'B' & Mark 'C' are the same documents) are at the most self-maintained record of Hemant Sharma the then JE for his own convenience without any authority and therefore no reliance can be placed upon the same. AW3 when put to cross-examination by management No.1 & 2 stated that the documents Mark 'A' to Mark 'C' were maintained by him with regard to attendance of outsource employees as his personal record to verify the pay bills submitted by the outsource contractor Golden Eagle. He has never submitted the documents Mark 'A' to Mark 'C' to any of his higher officers. As far as disciplinary authority of workman is concerned, the workman own witness AW3 Hemant Sharma, the then J.E. in his cross-examination conducted by management No.1 & 2 that any action with regard to conduct of outsource employees was taken by the concerned contractor.

35. Letter No.29 dated 16.01.2015 / Exhibit 'MX' is admittedly issued by Sub-Divisional Engineer, Provincial Sub-division No.3, Punjab PWD (B&R), Chandigarh to M/s Golden Eagle Security Service, Chandigarh relating to the subject of reduction of manpower. The contents of Exhibit 'MX' are reproduced as below :-

"Please refer to our Contract with you for manpower supply vide agreement No.6496 dated 31.12.2014 this is to inform you that the post for one beldar and one mason is being reduced from the said contract w.e.f. 24.01.2015 at our location Sector 39-C, Chandigarh and they are directed to report at your office on 24.01.2015 for further instructions and adjustment please."

36. MW3 when put to cross-examination by management No.3 stated that he has seen original letter No.29 dated 16.01.2015, copy of which is already brought into evidence Exhibit 'MX'. The letter Exhibit 'MX' is issued from their office (original letter No.29 dated 16.01.2015 was placed on record, copy of the document being already exhibited). MW4, Partner of M/s Golden Eagle Security Services in her affidavit Exhibit 'MW4/A' categorically stated that she received a letter No.29 dated 16.01.2015 from official respondents i.e. Sub-Divisional Engineer, Provincial Sub-Division No.3, Punjab, PWD (B&R), Chandigarh regarding reduction of manpower in the category of Mason and *Beldar*; one post each w.e.f. 24.01.2015. Copy of the original letter dated 16.01.2015 received by her from the official respondent is already on record as Exhibit 'MX' in the evidence of MW3. She on receipt of letter dated 16.01.2015 from the official respondent asked the workman to report back to her firm on 24.01.2015 for further instructions for the deployment vide letter dated 22.01.2015 but the workman never reported back to the deponent and as such abandoned the job of his own volition. AW1 when put to cross-examination by management No.3 admitted as correct that he never approached / reported for duty with the management No.3 after 25 January, 2015. AW1 has denied the receipt of any letter from the management No.3 to report back for deployment somewhere else. To my opinion, the service of letters Exhibit 'M4/1' and Exhibit 'M4/2' to the workman becomes immaterial in view of the fact that the workman had never been willing to rejoining duty with contractor - management No.3. In this regard AW1 when put to cross-examination by contractor - management No.3 stated that it is correct that he has no claim against management No.3 i.e. Golden Eagle Security Services, Chandigarh. From the aforesaid version of AW1 it is sufficiently proved on record that the workman has no intention to join service with the management No.3. Abandonment or relinquishment of service is always a question of intention. The workman / AW1 in his cross-examination admitted as correct that management No.3 has not terminated his services and he has no link with the management No.3 and he never approached the management No.3 to deploy him at any other place after 24.01.2015. From the aforesaid version of AW1 it could be inferred that the workman has indeed abandoned the services of management No.3 with intention not to rejoin duty with management No.3 / employer.

37. The discussion made above would prove that the workman was appointed by the contractor - management No.3, he was paid salary by the management No.3 / contractor and his services were controlled and supervised by the management No.3 / contractor, being disciplinary authority.

38. In view of the judgment **(2009) 13 SCC 374(supra)**, which is applicable to the facts of the present case to an extent, the workman is proved direct employee of the contractor i.e. M/s Golden Eagle Security Services and the control of Department of Chief Engineer and Executive Engineer, PWD (B&R), Punjab being principal employer is secondary in nature. Consequently, there is no direct relationship of employer and employee between the management No.1 & 2 and the workman. It is the contractor - management No.3, who is the employer of the workman. As discussed above, the workman is not willing to join the service with the management No.3 and is proved to have abandoned the job of management No.3 w.e.f. 24.01.2015, therefore, the workman is not entitled to any relief against contractor - management No.3.

39. As far as the relief of regularisation in service sought by the workman is concerned, it is admitted by the workman that for seeking regularisation in service the workman along with other petitioners has filed CWP No.3634 of 2015 which pending before the Hon'ble High Court. In this regard AW1 when put to cross-examination by management No.3 admitted as correct that he has filed a case in the Hon'ble High Court i.e. CWP No.3634 of 2015 titled as Jarnail Singh & Others Versus State of Punjab & Others. AW1 has admitted as correct that he has also claimed salary for the period of month of December, 2014 from management No.1 & 2 by filing MA in the above writ petition and the same is pending before the Hon'ble High Court. AW1 admitted as correct that the whole affidavit talks about averments made by him and others in the Writ Petition pending before the Hon'ble High Court. The above mentioned version of AW1 would prove that the matter seeking regularisation of service is sub-judice before the Hon'ble High Court and therefore, the same is not required to be adjudicated by this Court.

40. Accordingly, issue No.1 is proved in favour of managements No.1 & 2 and against the workman. Issue No.2 is proved against the workman and in favour of the managements No. 1 to 3.

Relief :

41. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 19.04.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

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